REMARKS

Claims 1-17 and 20-33 are pending and stand rejected. In response, claims 1, 8, 12, 20, 27, and 30-33 are amended and claim 21 is canceled. Claims 1-17, 20, and 22-34 are pending upon entry of this amendment.

35 U.S.C. § 101 Rejection

Claims 12-17 and 30-33 stand rejected under 35 U.S.C. § 101 because the claimed invention is allegedly directed to non-statutory subject matter. Specifically, the Examiner alleges that claims 12-17, 30, 32, and 33 are directed to matter comprised of software per se. Claim 31 is directed to a computer usable medium and the Examiner asserts that Applicants have not demonstrated that usable mediums such as carrier waves are not included within the scope of the claim limitations.

As amended, claim 12 recites "a computer configured to execute an access control console." The computer is a hardware element and, therefore, the claim is not directed to software per se. Dependent claims 13-16 incorporate the limitations of their respective base claims and are statutory for at least the same reasons.

Claim 31 is amended to recite a computer program product comprising: "a computer usable *storage* medium having computer *executable* code embodied therein." Amended claims 30, 32, and 33 similarly recite computer usable storage media. Applicants submit that the claimed storage media exclude media such as carrier waves and signals and constitute patentable subject matter as recognized in MPEP 2106.01. If the Examiner maintains this rejection, Applicants respectfully request that the Examiner explain why the claims are not statutory, rather than requiring Applicants to demonstrate that the claims are statutory.

35 U.S.C. § 103 Rejection

Claims 1-10, 12-17, and 20-33 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bates et al., U.S. Patent 6,721,721 in view of Hericourt et al., U.S. Patent 7,099,916. Claim 11 stands rejected as being unpatentable over the combination of Bates

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and Hericourt in view of Symantec, "Norton AntiVirus Corporate Edition." Applicants respectfully traverse these rejections as applied to the amended claims.

The claimed invention uses a virus outbreak report indicating a virus attack to compute a computer virus alert time. The computer virus alert time is compared with a time stamp corresponding to the earliest moment computer code was allowed to execute, and the executability of the computer code is determined in response to the comparison. Specifically, the independent claims recite limitations corresponding to:

> entering a first computer virus status mode in response to a first computer virus outbreak report indicating a virus attack threat to a computer network;
>
> computing a first computer virus alert time corresponding to entry into the first computer virus status mode;
>
> comparing a time stamp of executable computer code **corresponding to an earliest moment the computer code was allowed to execute** with the first computer virus alert time; and
>
> determining the executability of the computer code in response to the result of the comparing step.

(quoting from claim 1). Dependent claim 8 further recites that the "computer code is determined to be executable only when the computer code is time stamped prior to the first computer virus alert time." In other words, the computer code is executable because it has existed since before the virus alert and, therefore, is unlikely to be infected by that virus. Support for the amendments to the claims is found at paragraph 38 and elsewhere in the specification.

The cited references, at the least, fail to disclose "comparing a time stamp...corresponding to an earliest moment the computer code was allowed to execute." Bates discloses a system that integrates virus checking functionality into a computer database search environment, thereby allegedly decreasing the risks of viruses associated with accessing search results from computer database searches. See Bates, Abstract; column 3, lines 1-3.

The Examiner asserts that Bates "discloses that a time stamp of the executable code corresponds, *inter alia*, to the time the code was virus scanned" but does not explicitly

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disclose that the time stamp corresponds to an execution time of the computer code. The Examiner addresses this lack of disclosure by citing to Hericourt, which allegedly discloses that virus scanning of executable code can comprises an execution of the code. Therefore, the Examiner alleges, it would have been obvious to one of ordinary skill in the art to recognize the teachings of Hericourt within the system of Bates.

Assuming that scanning and execution are equivalent (a point Applicants do not concede), neither Bates nor Hericourt discloses or suggests using a time stamp that corresponds to the earliest moment the computer code was allowed to execute. Both references assume that code is scanned multiple times, and neither reference attaches any special significance to the earliest time that the code was scanned (or executed).

The Symantec reference fails to remedy the deficiencies of Bates and Hericourt described above. Therefore, a person of ordinary skill in the art, considering the teachings of the references either alone or in combination would not find the claimed invention obvious. Accordingly, Applicants respectfully submit that the pending claims are allowable over the cited references and request allowance of the claims. If the Examiner believes that direct contact with the Applicants' attorney will advance the prosecution of this case, the Examiner is encouraged to contact the undersigned as indicated below.

Respectfully submitted,
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